IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.3452 OF 2003

New Atul Engineering Works
Pvt. Ltd. & Ors. ...Applicants

Vs.

State of Maharashtra
& Anr. ...Respondents

Mr. V.P. Vaze for the Applicants.
Mr. R.Y. Mirza A.P.P. for the State.
Mr. M.S. Upadyay for the Respondent No.2.

CORAM : A.S.OKA, J.
DATED : JULY 18, 2005.

P.C.:

1. Rule. Learned A.P.P. waives service for the Respondent No.1. The learned Counsel appearing for the Respondent No.2 waives service. By consent taken up for final hearing.

2. The Applicants are the original accused against whom order of conviction and sentence was passed on 13th December, 2002 by the learned Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai. Being aggrieved by said order of conviction and sentence the Applicants herein preferred a Revision Application in the Sessions Court at Mumbai. An Application was made on 24th April, 2003 by the Applicants praying for converting the Revision Application into Appeal as according to the Applicants an Appeal against the impunged judgment and order passed by the learned Magistrate was maintainable.

3. By the order impugned dated 24th July, 2003,

the said Application was rejected. The learned Judge held that appeal against the order of conviction and sentence was not maintainable and revision has been rightly filed.

4. On 11th November, 2003 this Court issued notice and granted ad-interim relief which has the result of staying the further proceedings of the Revision Application.

5. After having heard the Counsel appearing for the parties, in my view it is not necessary to undertake the exercise of deciding at this stage whether an appeal will lie against the impugned order passed by the learned Magistrate. An Application was made by the Applicants expressing desire to convert the Revision Application into an appeal. The Applicants are taking risk by getting the Revision Application converted into the appeal. Instead of adjudicating upon the question whether revision was maintainable or appeal was maintainable, the learned Judge could have allowed the Application by keeping the question as regards of maintainibility of appeal open. In view of this position, I pass the following order:

: O R D E R :

i) The impunged judgment and order dated 24th July, 2003 is quashed and set aside. The Application made by the Applicants on 24th April, 2003 is allowed at the risk of the Applicants and they are permitted to convert the Revision Application No.750 of 2002 into an Appeal. It is made clear that no adjudication is made on the question whether an appeal against the impunged judgment and order of conviction and sentence is maintainable in law and the said question will be decided as and when the appeal is heard by the concerned court.

ii) Rule is made partly absolute on above terms with no orders as to costs.

iii) Parties to act upon an authenticated copy of this order.

JUDGE